

§ 370.5

12 CFR Ch. III (1–1–10 Edition)

330, a depositor's funds in a non-interest-bearing transaction account maintained at a participating entity that is an insured depository institution are guaranteed in full (irrespective of the standard maximum deposit insurance amount defined in 12 CFR 330.1(n)) from October 14, 2008 through:

(1) The date of opt-out, in the case of an entity that opted out prior to December 5, 2008;

(2) December 31, 2009, in the case of an entity that opts out effective on January 1, 2010; or

(3) June 30, 2010, in the case of an entity that does not opt out.

(b) In determining whether funds are in a noninterest-bearing transaction account for purposes of this section, the FDIC will apply its normal rules and procedures under §360.8 (12 CFR 360.8) for determining account balances at a failed insured depository institution. Under these procedures, funds may be swept or transferred from a noninterest-bearing transaction account to another type of deposit or nondeposit account. Unless the funds are in a noninterest-bearing transaction account after the completion of a sweep under §360.8, the funds will not be guaranteed under the transaction account guarantee program.

(c) Notwithstanding paragraph (b) of this section, in the case of funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account, the FDIC will treat the swept funds as being in a noninterest-bearing transaction account. As a result of this treatment, the funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, as defined in 12 CFR 204.2(d), will be guaranteed under the transaction account guarantee program.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 45098, Sept. 1, 2009]

§ 370.5 Participation.

(a) *Initial period.* All eligible entities are covered under the temporary liquidity guarantee program for the period from October 14, 2008, through December 5, 2008, unless they opt out on or before 11:59 p.m., Eastern Standard Time, December 5, 2008, in which case

the coverage ends on the date of the opt-out.

(b) The issuance of FDIC-guaranteed debt subject to the protections of the debt guarantee program is an affirmative action by a participating entity that constitutes its agreement to be:

(1) Bound by the terms and conditions of the program, including without limitation, assessments and the terms of the Master Agreement as set forth on the FDIC's Web site;

(2) Subject to, and to comply with, any FDIC request to provide information relevant to participation in the debt guarantee program and to be subject to FDIC on-site reviews as needed, after consultation with the appropriate Federal banking agency, to determine compliance with the terms and requirements of the debt guarantee program; and

(3) Bound by the FDIC's decisions, in consultation with the appropriate Federal banking agency, regarding the management of the temporary liquidity guarantee program.

(c) *Opt-out and opt-in options.*

(1) From October 14, 2008 through December 5, 2008, each eligible entity is a participating entity in both the debt guarantee program and the transaction account guarantee program, unless the entity opts out. No later than 11:59 p.m., Eastern Standard Time, December 5, 2008, each eligible entity must inform the FDIC if it desires to opt out of the debt guarantee program or the transaction account guarantee program, or both. Failure to opt out by 11:59 p.m., Eastern Standard Time, December 5, 2008 constitutes a decision to continue in the program after that date. Prior to December 5, 2008 an eligible entity may opt in to either or both programs by informing the FDIC that it will not opt out of either or both programs.

(2) Any insured depository institution that is participating in the transaction account guarantee program may elect to opt out of such program effective on January 1, 2010. Any such election to opt-out must be made in accordance with the procedures set forth in paragraph (g)(2) of this section. An election to opt out once made is irrevocable.

(d) An eligible entity may elect to opt out of either the debt guarantee program or the transaction account guarantee program or both. The choice to opt out, once made, is irrevocable, except that, in the case of a merger between two eligible entities, the resulting institution will have a one-time option to revoke a prior decision to opt out. This option must be requested by application to the FDIC in accordance with § 370.3(h). Similarly, the choice to affirmatively opt in, as provided in paragraph (c) of this section, once made, is irrevocable.

(e) All eligible entities that are affiliates of a U.S. bank holding company or that are affiliates of an eligible entity that is a U.S. savings and loan holding company must make the same decision regarding continued participation in each guarantee program; failure to do so constitutes an opt out by all members of the group.

(f) Except as provided in paragraphs (g), (j), and (k) of § 370.3, participating entities are not permitted to select which newly issued senior unsecured debt is guaranteed debt; all senior unsecured debt issued by a participating entity up to its debt guarantee limit must be issued and identified as FDIC-guaranteed debt as and when issued.

(g) *Procedures for opting out.*

(1) Except as provided in paragraph (g)(2) of this section, the FDIC will provide procedures for opting out and for making an affirmative decision to opt in using FDIC's secure e-business website, FDICconnect. Entities that are not insured depository institutions will select and solely use an affiliated insured depository institution to submit their opt-out election or their affirmative decision to opt in.

(2) Pursuant to paragraph (c)(2) of this section a participating entity may opt out of the transaction account guarantee program effective on January 1, 2010 by submitting to the FDIC on or before 11:59 p.m., Eastern Standard Time, on November 2, 2009 an email conveying the entity's election to opt out. The subject line of the email must include: "TLGP Election to Opt Out—Cert. No. _____." The email must be addressed to dcas@fdic.gov and must include the following:

(i) Institution Name;

(ii) FDIC Certificate number;

(iii) City, State, ZIP;

(iv) Name, Telephone Number and Email Address of a Contact Person;

(v) A statement that the institution is opting out of the transaction account guarantee program effective January 1, 2010; and

(vi) Confirmation that no later than November 16, 2009 the institution will post a prominent notice in the lobby of its main office and each domestic branch and, if it offers Internet deposit services, on its website clearly indicating that after December 31, 2009, funds held in noninterest-bearing transaction accounts will no longer be guaranteed in full under the Transaction Account Guarantee Program, but will be insured up to \$250,000 under the FDIC's general deposit insurance rules.

(h) *Disclosures regarding participation in the temporary liquidity guarantee program.* (1) The FDIC will publish on its Web site:

(i) A list of the eligible entities that have opted out of the debt guarantee program, and

(ii) A list of the eligible entities that have opted out of the transaction account guarantee program.

(2) Each participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, an entity that has been approved pursuant to § 370.3(h) to issue FDIC-guaranteed debt after June 30, 2009, and on or before October 31, 2009, or a participating entity that has been approved pursuant to § 370.3(k) to issue FDIC-guaranteed debt after October 31, 2009, must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's Web site, <http://www.fdic.gov/tlgp>. [If the debt being issued is mandatory convertible debt, add: The expiration date of the

§ 370.5

12 CFR Ch. III (1–1–10 Edition)

FDIC's guarantee is the earlier of the mandatory conversion date or December 31, 2012]. [If the debt being issued is any other senior unsecured debt, add: The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or December 31, 2012.]

(3) Each participating entity other than an entity described in paragraph (h)(2) of this section must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt that is issued by it during the applicable issuance period and that is guaranteed under the debt guarantee program:

This debt is guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program and is backed by the full faith and credit of the United States. The details of the FDIC guarantee are provided in the FDIC's regulations, 12 CFR Part 370, and at the FDIC's Web site, <http://www.fdic.gov/tlgp>. [If the debt being issued is mandatory convertible debt, add: The expiration date of the FDIC's guarantee is the earlier of the mandatory conversion date or June 30, 2012. [If the debt being issued is any other senior unsecured debt, add: The expiration date of the FDIC's guarantee is the earlier of the maturity date of the debt or June 30, 2012.]

(4) Each participating entity must include the following disclosure statement in all written materials provided to lenders or creditors regarding any senior unsecured debt issued by it during the applicable issuance period that is not guaranteed under the debt guarantee program:

This debt is not guaranteed under the Federal Deposit Insurance Corporation's Temporary Liquidity Guarantee Program.

(5) Each insured depository institution that offers noninterest-bearing transaction accounts must post a prominent notice in the lobby of its main office, each domestic branch and, if it offers Internet deposit services, on its website clearly indicating whether the institution is participating in the transaction account guarantee program. If the institution is participating in the transaction account guarantee program, the notice must state that funds held in noninterest-bearing transactions accounts at the entity are guaranteed in full by the FDIC.

(i) These disclosures must be provided in simple, readily understandable text. Sample disclosures are as follows:

FOR PARTICIPATING INSTITUTIONS

[Institution Name] is participating in the FDIC's Transaction Account Guarantee Program. Under that program, through June 30, 2010, all noninterest-bearing transaction accounts are fully guaranteed by the FDIC for the entire amount in the account. Coverage under the Transaction Account Guarantee Program is in addition to and separate from the coverage available under the FDIC's general deposit insurance rules.

FOR PARTICIPATING INSTITUTIONS THAT ELECT TO OPT OUT OF THE EXTENDED TRANSACTION ACCOUNT GUARANTY PROGRAM EFFECTIVE ON JANUARY 1, 2010

Beginning January 1, 2010 [Institution Name] will no longer participate in the FDIC's Transaction Account Guarantee Program. Thus, after December 31, 2009, funds held in noninterest-bearing transaction accounts will no longer be guaranteed in full under the Transaction Account Guarantee Program, but will be insured up to \$250,000 under the FDIC's general deposit insurance rules.

FOR NON-PARTICIPATING INSTITUTIONS

[Institution Name] has chosen not to participate in the FDIC's Transaction Account Guarantee Program. Customers of [Institution Name] with noninterest-bearing transaction accounts will continue to be insured for up to \$250,000 under the FDIC's general deposit insurance rules.

(ii) If the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an account that is not guaranteed under the transaction account guarantee program, for example, an interest-bearing account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee with respect to the swept, transferred, or reclassified funds.

(i) *Participation By New Eligible Entities And Continued Eligibility.* The FDIC will determine eligibility in consultation with the eligible entity's appropriate Federal banking agency.

(1) Participation by an entity that is organized after October 13, 2008 or that becomes an entity described § 370.2(a) after October 13, 2008 will be: with respect to the transaction account guarantee program, effective on the date of the entity's opt-in as described in § 370.2(g)(2), and with respect to the debt guarantee program, considered by the FDIC on a case-by-case basis in

Federal Deposit Insurance Corporation

§ 370.6

consultation with the entity's appropriate Federal banking agency.

(2) An eligible entity that is not an insured depository institution will cease to be eligible to participate in the debt guarantee program once it is no longer affiliated with a chartered and operating insured depository institution.

(j) No mandatory convertible debt may be issued without obtaining the FDIC's prior written approval.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 9525, Mar. 4, 2009; 74 FR 12084, Mar. 23, 2009; 74 FR 45099, Sept. 1, 2009; 74 FR 54749, Oct. 23, 2009]

§ 370.6 Assessments under the Debt Guarantee Program.

(a) *Waiver of assessment for certain initial periods.* No eligible entity shall pay any assessment associated with the debt guarantee program for the period from October 14, 2008 through November 12, 2008. An eligible entity that opts out of the program on or before December 5, 2008 will not pay any assessment under the program.

(b) *Notice to the FDIC.* No guaranteed debt shall be issued by a participating entity under the FDIC's debt guarantee program unless notice of the issuance of such debt and payment of associated assessments is provided to the FDIC as required by this section and, for guaranteed debt issued after November 21, 2008, the participating entity agrees to be bound by the terms of the Master Agreement, as set forth on the FDIC's Web site.

(1) Any eligible entity that does not opt out of the debt guarantee program on or before December 5, 2008, as provided in § 370.5, and that issues any guaranteed debt during the period from October 14, 2008 through December 5, 2008 which is still outstanding on December 5, 2008, shall notify the FDIC of that issuance via the FDIC's e-business Web site *FDICconnect* on or before December 19, 2008, and the entity's Chief Financial Officer or equivalent shall certify that the issuances identified as FDIC-guaranteed debt outstanding at each point of time did not exceed the debt guarantee limit as set forth in § 370.3

(2) Each participating entity that issues guaranteed debt after December

5, 2008, shall notify the FDIC of that issuance via the FDIC's e-business Web site *FDICconnect* within the time period specified by the FDIC. The eligible entity's Chief Financial Officer or equivalent shall certify that the issuance of guaranteed debt does not exceed the debt guarantee limit as set forth in § 370.3.

(3) The FDIC will provide procedures governing notice to the FDIC and certification of guaranteed amount limits for purposes of this section.

(c) *Initiation of assessments.* Assessments, calculated in accordance with paragraph (d) of this section, will accrue, with respect to each eligible entity that does not opt out of the debt guarantee program on or before December 5, 2008:

(1) Beginning on November 13, 2008, on all senior unsecured debt, as defined in § 370.2(e)(1)(i) (except for overnight debt), issued by it on or after October 14, 2008, and on or before December 5, 2008, that is still outstanding on December 5, 2008; and

(2) Beginning on December 6, 2008, on all senior unsecured debt, as defined in paragraphs (e)(1)(ii) or (e)(1)(iii) of § 370.2, issued by it on or after December 6, 2008.

(d) *Amount of assessments for debt within the debt guarantee limit.*

(1) *Calculation of assessment.* Subject to paragraphs (d)(3) and (h) of this section, and except as provided in paragraph (i) of this section, the amount of assessment will be determined by multiplying the amount of FDIC-guaranteed debt times the term of the debt or, in the case of mandatory convertible debt, the time period from issuance to the mandatory conversion date, times an annualized assessment rate determined in accordance with the following table.

For debt with a maturity or time period to conversion date of—	The annualized assessment rate (in basis points) is—
180 days or less (excluding overnight debt)	50
181–364 days	75
365 days or greater	100

(2) If the debt being issued has a maturity date that occurs after the expiration date of the guarantee, the expiration date of the guarantee instead of